

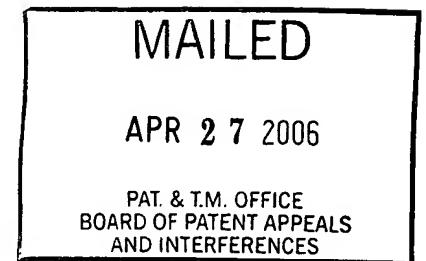
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN A. EWALD

Appeal No. 2006-1365
Application No. 10/672,133

ON BRIEF



Before OWENS, BAHR, and NAPPI, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 1-19, which are all of the pending claims.

THE INVENTION

The appellant claims a system and method for purchasing goods and services using a broadcast receiver. Claim 1 is illustrative:

1. A system for purchasing goods and services linked with broadcast media, comprising:

Appeal No. 2006-1365
Application No. 10/672,133

one or more broadcast receivers that receive a broadcast media including information relating to goods and services that can be purchased by persons receiving the media, the receiver further selectively recording the purchase data for goods and services that a person purchases relating to the broadcast media; and

one or more servers that selectively receive and verify purchase data sent from the one or more receivers.

THE REFERENCE

Kesling et al. (Kesling) 2002/0132575 Sep. 19, 2002

THE REJECTION

The claims stand rejected as follows: claims 1-13 and 15-19 under 35 U.S.C. § 102(e) as anticipated by Kesling, and claim 14 under 35 U.S.C. § 103 as obvious over Kesling in view of official notice.

OPINION

We affirm the aforementioned rejections.

Kesling discloses systems and methods for facilitating mobile commerce (§ 0011). If a radio listener wants to purchase a product that has just been advertised, the listener can press a select button (1220) to receive further information regarding the product such as price and availability, and "[t]he listener might even complete the transaction using radio 20, which, since it includes the high power wireless transceiver, can function as a conventional text pager" (§ 0066). "[D]uring the airing of a

Appeal No. 2006-1365
Application No. 10/672,133

vitamin advertisement, users would push select button **1220** to purchase the vitamin product.... After select button **1220** is pushed, the system administrator would immediately receive the user's order through a wireless network" (§ 0090).

The appellant argues that "the broadcast receiver of *Kesling, et al.*, discloses at most an 'informational request,' and not a 'purchase request' as claimed the [sic] present invention" (brief, page 5), and that "the most reasonable interpretation of the term 'transaction' in this passage of *Kesling, et al.* [i.e., '[t]he listener might even complete the transaction using radio **20**, which, since it includes the high power wireless transceiver, can function as a conventional text pager' (§ 0066)], appears to be that the transaction of the listener obtaining further information can be completed through the text messaging of the wireless transceiver" (brief, page 6). Kesling's disclosure that "during the airing of a vitamin advertisement, users would push select button **1220** to purchase the vitamin product" (§ 0090) indicates that the transaction referred to by Kesling is a purchase.

The appellant argues that the only technical detail disclosed by Kesling is that the broadcast receiver includes a high power wireless transceiver and can function as a

Appeal No. 2006-1365
Application No. 10/672,133

conventional text pager (§ 0066), and that this disclosure would not have enabled one of ordinary skill in the art to create a broadcast receiver-generated purchase request (brief, page 7; reply brief, page 2). The appellant has not provided evidence in support of that argument, and arguments of counsel cannot take the place of evidence. See *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984); *In re Payne*, 606 F.2d 303, 315, 203 USPQ 245, 256 (CCPA 1979); *In re Greenfield*, 571 F.2d 1185, 1189, 197 USPQ 227, 230 (CCPA 1978); *In re Pearson*, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974). Moreover, the similar lack of technical detail in the appellant's specification indicates that if one of ordinary skill in the art could carry out a radio-generated purchase based upon the appellant's disclosure at the time of the appellant's invention, that person could do the same given Kesling's disclosure.

For the above reasons we are not convinced of reversible error in the examiner's rejections.

Appeal No. 2006-1365
Application No. 10/672,133

DECISION


The rejections of claims 1-13 and 15-19 under 35 U.S.C. § 102(e) over Kesling, and claim 14 under 35 U.S.C. § 103 over Kesling in view of official notice, are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Terry J. Owens
Terry J. Owens
Administrative Patent Judge


Jennifer D. Bahr
Administrative Patent Judge


Robert E. Nappi
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

TJO:tdl

Appeal No. 2006-1365
Application No. 10/672,133

Carlton Fields, PA
1201 West Peachtree Street
3000 One Atlantic Center
Atlanta, GA 30309